

### **REMARKS/ARGUMENTS**

The amendments to claims 7 and 8 are supported in the specification on page 15, paragraph [0041]. New claim 16 is supported in the specification on page 6, line 19 and page 5, lines 4-5. New claim 17 is supported by page 6, paragraph [0017]. New claim 18 is supported by claims 7, 8, and in the specification on page 15, paragraph [0041]. New claim 19 is supported by claim 8. New claim 20 is supported by claim 9. New claim 21 is supported by claim 10. New claim 22 is supported by claim 16. New claim 23 is supported by claim 17. These amendments do not add new matter to the specification and their entry is requested.

Claims 7 and 12 stand rejected under the judicially created doctrine of non-statutory obviousness-type double patenting as allegedly unpatentable over conflicting claim 1 of Rohdewald (U.S. patent 6,565,851) and Thompson (U.S. patent application 2003/0064123). Applicants traverse.

Solely in an effort to expedite prosecution, Applicants have amended claim 7 to recite a method for enhancing fertility and added new claim 18 for enhancing sperm quality. Claim 12 has been canceled. Rohdewald and Thompson, individually or in combination, refer to erectile tissue and do not mention or suggest enhancing sperm quality or fertility. Since amended claim 7 and Rohdewald and Thompson are directed to different subject matter and the combination does not disclose, suggest or claim the instant claimed subject matter, the double patenting rejection is moot in view Applicants amendment and its withdrawal is requested.

Claims 7-15 stand provisionally rejected under the judicial created of non-statutory obviousness-type double patenting as allegedly unpatentable over claims 9-13 and 15-18 of Rohdewald '742 application (U.S. Patent Application Serial Number 11/054,742) in view of Thompson (U.S. patent application 2003/0064123). Applicants traverse.

Solely in an effort to expedite prosecution, Applicants have amended claim 7 to recite a method for enhancing fertility and added new claim 18 for enhancing sperm quality. The remaining pending claims are dependent on claim 7 or 18 and incorporate the recitations of these claims. Since the claims, as amended, are directed to enhancing sperm quality or fertility while the claims of the Rohdewald '742 application are not directed to these subjects, there can be no

double patenting.

For the reason stated above and because no claims have been allowed in the Rohdewald '742 application, Applicants request that this provisional rejection be withdrawn.

Claims 7-14 stand rejected under 35 U.S.C. § 112 as allegedly failing to comply with the written description requirement because of the term "attaining enhanced sexual wellness." Applicants traverse.

Solely in an effort to expedite prosecution, the term "attaining enhanced sexual wellness" has been removed. Thus, this rejection is moot in view of Applicants' amendment and should be withdrawn.

Claims 7-14 stand rejected under 35 U.S.C. § 103 as allegedly obvious in view of Shell (WO 00/00212) and Thompson (U.S. patent application 2003/0064123). Applicants traverse.

The claims, as amended, are not obvious in view of a combination of Shell and Thompson because such a combination does not disclose or suggest all the recitations of the pending claims. Amended claims 7 and new claim 18 are directed to methods of improving fertility and sperm quality. Neither Shell nor Thompson make any reference to sperm quality or fertility. Furthermore, since neither Shell nor Thompson disclose or suggest an improvement to sperm quality or fertility, there is no reason for one of skill in the art to combine the two references to the claimed invention, as recited pending claim 7 and claims dependent thereon.

For the reasons stated above, the claimed invention is not obvious in view of the cited references and the withdrawal of this rejection is respectfully requested.

Claims 7-14 stand rejected under 35 U.S.C. § 103 as allegedly obvious in view of Shell (WO 00/00212) and Roberts (U.S. patent 4,835,147). Applicants traverse.

As discussed above, the claimed invention, as amended, is directed to a method to improve sperm quality or fertility. Shell does not disclose or suggest methods of improving sperm quality and fertility. In addition, Roberts is also silent as to improving sperm quality and fertility. Since neither reference disclose or suggest methods of improving sperm quality and fertility, there is no motivation to combine these references to achieve the claimed invention.

Furthermore, even if these references were combined, it would not disclose or suggest the recitations of the claimed invention - a method to improve sperm quality and fertility.

For the reasons stated above, the claimed invention is not obvious in view of the cited references and the withdrawal of this rejection is respectfully requested.

Claims 7-14 stand rejected under 35 U.S.C. § 103 as allegedly obvious in view of Rohdewald '314 Application (DE19845314) and Thompson (U.S. patent application 2003/0064123). Applicants traverse.

The claimed invention is not obvious in view of a combination of the Rohdewald '314 application and Thompson because neither reference, individually or in combination, disclose or suggest all the limitations of the instant claims - directed to methods of enhancing fertility or sperm quality. Since neither reference disclose or suggest this recitation of the instant claims, there is no motivation or suggestion to combine the two references. Furthermore, even if both references were combined, it would not disclose or suggest the claimed invention of enhancing sperm quality or fertility.

For the reasons stated above, the claimed invention is not obvious in view of the cited references and the withdrawal of this rejection is respectfully requested.

Claims 7-14 stand rejected under 35 U.S.C. § 103 as allegedly obvious in view of Rohdewald '314 Application (DE19845314) and Roberts (U.S. patent 4,835,147). Applicants traverse.

The claimed invention is not obvious in view of a combination of the Rohdewald '314 application and Roberts because neither reference, individually or in combination, disclose or suggest all the limitations of the instant claims - methods of enhancing fertility or sperm quality. Since neither reference disclose or suggest this recitation of the instant claims, there is no motivation or suggestion to combine the two references. Furthermore, even if both references were combined, it would not disclose or suggest the claimed invention of enhancing sperm quality or fertility.

For the reasons stated above, the claimed invention is not obvious in view of the cited

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references and the withdrawal of this rejection is respectfully requested.

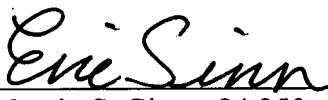
**CONCLUSION**

Favorable action on the merits is respectfully requested. If any discussion regarding this Amendment is desired, the Examiner is respectfully urged to contact the undersigned at the number given below, and is assured of full cooperation in progressing the application to allowance.

Applicants believe that no additional fees are due with the filing of this Response. However, if any additional fees are required or if any funds are due, the USPTO is authorized to charge or credit Deposit Account Number: **50-0311**, Customer Number: **35437**, Reference Number **27990-504**.

Respectfully submitted,

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